

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexandra Holmstrom-Smith	Team: Team # 1	CCRB Case #: 200901925	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/05/2009 12:10 PM	Location of Incident: Outside the elevator in 1694 Madison Avenue	Precinct: 23	18 Mo. SOL 8/5/2010	EO SOL 8/5/2010	
Date/Time CV Reported Mon, 02/09/2009 10:33 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 02/07/2009 4:13 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Nelly Guillermo	09120	943331	PSA 5
2. POF Kristin Beissel	12261	945499	PSA 5
3. POM Orvin Feliciano	22257	942855	HBM IRT

Officer(s)	Allegation	Investigator Recommendation
A.POF Nelly Guillermo	Abuse: PO Nelly Guillermo questioned § 87(2)(b)	
B.POF Kristin Beissel	Abuse: PO Kristin Beissel questioned § 87(2)(b)	
C.POM Orvin Feliciano	Abuse: PO Feliciano threatened § 87(2)(b) with the use of force.	

Case Summary

§ 87(2)(b) filed a complaint with the CCRB via the Call-Processing System on February 7, 2009 (encl. 5a).

On February 5, 2009, § 87(2)(b) was visiting his mother's apartment building, located at 1694 Madison Avenue in Manhattan. In the building's lobby, § 87(2)(b) encountered PO Nelly Guillermo and PO Kristin Beissel, both of PSA5. § 87(2)(b) was later transported to the PSA5 stationhouse by PO Orvin Feliciano. The following allegations resulted:

- **Allegation A – Abuse of Authority:** PO Nelly Guillermo questioned § 87(2)(b)
- **Allegation B – Abuse of Authority:** PO Kristin Beissel questioned § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
- **Allegation C – Abuse of Authority:** PO Orvin Feliciano threatened § 87(2)(b) with the use of force. § 87(2)(b), § 87(2)(g)
§ 87(2)(b)

Results of Investigation

Civilian Statements

Complainant: § 87(2)(b) □

- § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

CCRB Testimony

§ 87(2)(b) made his initial complaint on February 7, 2009 (encl. 5a-b), provided a telephone statement on February 9, 2009 (encl. 6a), and was interviewed at the CCRB on February 10, 2009 (encl. 6b-g). His statements were consistent with each other and have been combined. On February 5, 2009, § 87(2)(b) walked approximately three blocks from his apartment to his mother's apartment. He was wearing black sweatpants, sneakers, a black coat, and a knit winter hat, and was not carrying anything. § 87(2)(b) arrived at his mother's building around 10:00 a.m. He did not stop to talk to anyone outside or inside the building, and he did not see any police officers in the vicinity upon entering. § 87(2)(b) left the apartment at approximately 12:10 p.m. with the intention of picking up his mother, who was being released from Mt. Sinai Hospital that day. § 87(2)(b) did not encounter any other people in the hallway or stairs upon exiting the apartment. He took the elevator alone and exited in the lobby. The two elevators are opposite the entrance doors, and the lobby is approximately 25 feet across. There are mailboxes along one wall, and § 87(2)(b) came out of the elevator closer to the mailboxes. Standing somewhere near the door were two female police officers in uniform, identified through investigation as PO Nelly Guillermo and PO Kristin Beissel, both of PSA5. § 87(2)(b) described PO Guillermo as an attractive light-skinned Hispanic female, 5'2"-5'3", 150 pounds, with brown hair with streaks in it. He described PO Beissel as white female, approximately the same age as PO Guillermo, 5'4"-5'5", 130 pounds, possibly blond hair. The officers were standing and did not appear to be doing anything. The only other person in the lobby was the mailman, identified through investigation as § 87(2)(b) Danny § 87(2)(b) who was putting mail in the mailboxes. § 87(2)(b) did not have any bags or other items with him. He thought that his cell phone was in his upper left hand pocket, because this is where he normally keeps it. § 87(2)(b) was not talking on his phone when he exited the elevator.

§ 87(2)(b) walked towards the doors to exit the building but before he got there, PO Guillermo asked § 87(2)(b) if he lived in the building. § 87(2)(b) was surprised at the question and immediately answered, “Why are you asking?” PO Guillermo said that he did not look familiar. § 87(2)(b) said, “Are you insinuating that you know everyone in the building?” PO Guillermo said, “I need to see your identification.” § 87(2)(b) asked why he was being stopped and whether he looked or was doing anything suspicious. PO Guillermo asked him for ID again. § 87(2)(b) later said that PO Guillermo repeatedly said, “I want your ID”). § 87(2)(b) told PO Guillermo that he did not have any ID, although this was untrue. § 87(2)(b) actually did have his wallet in his pocket, containing his ID. PO Guillermo stated that she had the authority and the right to ask § 87(2)(b) for ID as well as to stop him. § 87(2)(b) told PO Guillermo that there was no reason, in his opinion, why he needed to be stopped because the only thing he was doing was exiting the building. § 87(2)(b) initially said that PO Guillermo told § 87(2)(b) to be quiet or he could be arrested. § 87(2)(b) later said that PO Guillermo also said, “You can be arrested,” but did not explain why. PO Beissel repeatedly said, “Shut the fuck up, shut the fuck up, do as you’re told.” § 87(2)(b) continued to say that he did not understand the reason he was being stopped. Apart from asking whether he lived in the building, what apartment number he was coming from, and to see his ID, PO Guillermo did not ask § 87(2)(b) any other questions about what he was doing or anything else. After being asked specifically about it, § 87(2)(b) said that he believed that PO Guillermo asked him what apartment he was coming from, and that he responded by asking again why he was being stopped. He never told PO Guillermo what apartment he was coming from, but he also never told PO Guillermo that he did not live in the building. § 87(2)(b) also never told the officers that he was going to pick up his mother from the hospital. Although § 87(2)(b) never asked the officers if he was free to leave, he felt sure that he was not. While talking to them, § 87(2)(b) was less than 2 feet from the officers. § 87(2)(b) did not say anything back to the officers apart from repeatedly asking why he was being stopped. PO Beissel never asked § 87(2)(b) for his ID or whether he lived in the building.

After less than 7 minutes, PO Guillermo asked § 87(2)(b) to turn around and put his hands behind his back, and then handcuffed him. Prior to this, neither officer had any physical contact with § 87(2)(b) nor did either he or the officers make any motions forward or away from each other. PO Guillermo removed § 87(2)(b)'s wallet from his top left coat pocket. PO Guillermo opened his wallet and looked at his driver's license. She then said, “But you do live in the building.” § 87(2)(b) said, “I never said I did not.” § 87(2)(b)'s driver's license has his mother's address because he previously lived there for approximately 30 years). § 87(2)(b) said again that he did not understand why he was stopped because he was not doing anything aside from exiting the building. The officer called for assistance, and a van was called to the parking lot of the building. § 87(2)(b) noticed PO Guillermo's name on her badge in the course of their conversation. § 87(2)(b) was standing close enough to him and the officers to hear the entire conversation, and he appeared to be listening and was shaking his head back and forth, as if to indicate that he thought the situation was ridiculous.

PO Guillermo escorted § 87(2)(b) to the van and brought him to the stationhouse located on East 123rd Street, which he believed was PSA5. In a phone call on April 21, 2009, § 87(2)(b) added the allegation that an officer identified through investigation as PO Orvin Feliciano, who is the subject of case # 200906048, which § 87(2)(b) also filed, was driving the van that § 87(2)(b) was transported in and he said, “Don't make me go back there--I'll fuck you up.” At the stationhouse § 87(2)(b) was processed. After taking his fingerprints PO Guillermo acknowledged that § 87(2)(b) had a clean record. § 87(2)(b) replied, “I am aware of that.” PO Guillermo said that she was not trying to be an “asshole,” but if he had shown her his ID all this could have been resolved. § 87(2)(b) continued to explain why he should have never been stopped. § 87(2)(b) was placed in a cell and then driven to Manhattan Central Booking, where he spent the night. The

§ 87(2)(b), § 87(2)(a) 160.50

complaint the next day.

§ 87(2)(b) said he did not wish to have the CCRB investigate PO Guillermo using the word “asshole” or PO Beissel’s use of profanity because he thought that it was typical for officers to use profanity. § 87(2)(b) said that he felt that from the start of their interaction, the officers viewed him with the assumption that he was guilty of something. § 87(2)(b) believed that he was racially profiled, and he thought that he would not have been stopped if he had been dressed in his shirt and tie that he normally wears to work.

Witness: § 87(2)(b) § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided a telephone statement to the CCRB on October 21, 2009 (encl. 7a). On the date of the incident, § 87(2)(b) was in the lobby delivering mail at 1694 Madison Avenue, which is not on his regular route. He had his back turned but he was aware that two female police officers arrived in the lobby. § 87(2)(b) believed that § 87(2)(b) had just exited the elevator and was walking out of the lobby when PO Guillermo asked him for his ID and whether he lived in the building. § 87(2)(b) believed that § 87(2)(b) responded with something to the effect that his mother lived there, but he became angry when PO Guillermo requested his ID. PO Guillermo and PO Beissel were calm, although they did raise their voices somewhat as the interaction progressed. § 87(2)(b) stated that he did not have to show the officers his ID, became loud, and used profanity towards the police officers, although § 87(2)(b) did not remember exactly what was said. Although there were no other civilians in the lobby when this interaction began, several people walked in and out of the lobby and stood around to watch the incident as it unfolded. Neither the police officers nor § 87(2)(b) spoke to § 87(2)(b). He did not hear either police officer using profanity.

NYPD Statements:

Subject Officer: POLICE OFFICER NELLY GUILLERMO

- *PO Guillermo is a § 87(2)(b) Hispanic female who is 5’1”, 140 pounds, with brown hair and brown eyes*
- *On February 5, 2009, PO Guillermo worked a tour from 10:30 a.m. to 7:05 p.m. She was assigned to foot post No. § 87(2)(b) which encompasses the § 87(2)(e) § 87(2)(b). Her partner was PO Beissel. She was dressed in uniform and was not assigned to a vehicle.*

Memo Book

At 11:56 a.m., PO Guillermo noted in her memo book (encl. 8a-c) that she was doing a vertical patrol at 1694 Madison Avenue. At 12:00 p.m. she had one male stopped, and at 12:10 she wrote, “One under. § 87(2)(b) M., DOB: § 87(2)(b)

Complaint Report/Online Booking System Arrest Report

PO Guillermo was § 87(2)(b)s arresting officer and entered the information into the complaint report and OLBS (encl. 8d-e, 8f-g). The complaint report indicated that § 87(2)(b) was being charged with obstructing governmental administration, and the arrest report indicated that he was also being charged with disorderly conduct for unreasonable noise. The narrative read, “At T/P/O defendant was observed inside a NYCHA building. Defendant refused to give

apartment he was coming from and refused to supply identification to police officer. Defendant started screaming and caused public alarm and a crowd to gather.”

Supporting Deposition

PO Guillermo made a supporting deposition (encl. 8h) in relation to this case on February 5, 2009, at 7:42 p.m. In her deposition, PO Guillermo stated that § 87(2)(b) had committed disorderly conduct and that she “observed the defendant yelling and screaming for approximately five (5) minutes. Deponent further states that defendant’s conduct created a public disturbance in that it caused a crowd to gather and caused people to express alarm.”

CCRB Testimony

PO Guillermo was interviewed at the CCRB on March 16, 2009 (encl. 8i-k). PO Guillermo and her partner entered 1694 Madison Avenue, which is a NYCHA building, with the intention of conducting a vertical patrol. She and her partner were not looking for anything specific, but were doing patrols for trespassers or other criminal activity in the building. Upon entering the building, PO Guillermo observed § 87(2)(b) standing in the middle of the lobby facing the front doors of the building. § 87(2)(b) was standing and was not moving around or saying anything, nor did he have any property with him. PO Guillermo believed that § 87(2)(b) was wearing jogging clothes and possibly a hooded sweatshirt or sweater. PO Guillermo interpreted § 87(2)(b)’s standing in the lobby to mean that he was loitering. When asked whether anything raised her suspicions about him, PO Guillermo said that § 87(2)(b) had his hands in his front pockets (possibly his sweatshirt pockets). In addition to this, when the officers entered the building, § 87(2)(b) “kind-of” looked at them, then turned away as if to walk towards the elevators, and then turned back to face the officers. PO Guillermo stated that this was suspicious because § 87(2)(b)’s movements were furtive. PO Guillermo also stated that sometimes when people who are trespassing see officers in the building they will turn around and pretend that they are in the building waiting for someone when in fact they are simply loitering in the building and are criminally trespassing. At the time when PO Guillermo initially observed § 87(2)(b) the only people in the lobby were § 87(2)(b) the two officers, and the mailman, who was just entering the lobby.

PO Guillermo observed § 87(2)(b) for 30 seconds to one minute before speaking to him. PO Guillermo then approached § 87(2)(b) with the intention of finding out whether he lived in the building. PO Guillermo asked § 87(2)(b) if he lived in the building. § 87(2)(b) immediately started screaming and said that he did not need to tell PO Guillermo that information. PO Guillermo said, “Ok, that’s fine, do you understand that this is a drug-prone location?” PO Guillermo later said that she explained to § 87(2)(b) that because it was a drug-prone location, the officers try to verify that people in the building actually live there, which was why they were asking § 87(2)(b) for his ID. § 87(2)(b) started yelling and saying that PO Guillermo had no right to stop him. PO Guillermo said, “Sir, do you live in the building? Do you have any kind of ID?” At one point in the interview, PO Guillermo stated that § 87(2)(b) said, “I’m not giving you that,” and at another point, she said that § 87(2)(b) said, “I don’t have any ID.” § 87(2)(b) also said to the mailman, “Are you seeing this? Are you seeing this?” PO Guillermo later said that she did not know what was said, but the mailman responded by turning around and “went about his business.” Approximately two minutes into her interaction with § 87(2)(b) 5 or more additional civilians entered the lobby. PO Guillermo could not remember what they looked like or whether they were males or females. Instead of going through the lobby to the elevators, people gathered around PO Guillermo, her partner, and § 87(2)(b). PO Guillermo did not recall anyone in the crowd saying anything to her, but said that the expressions on their faces indicated that they were concerned. PO Guillermo estimated that her interaction with § 87(2)(b) lasted for 7 minutes, during which time § 87(2)(b) continued to get louder and made motioning gestures with his hands but did not do anything else. In addition to asking why he was being stopped, § 87(2)(b) said, “I don’t have to give you that”

and “I don’t care.” PO Guillermo did not say “Shut the fuck up,” to § 87(2)(b) and did not recall her partner saying this. PO Guillermo was the officer who was primarily interacting with § 87(2)(b) and the only thing that she remembered her partner saying to him was “PSA5” when he asked what precinct they were from.

PO Guillermo decided that § 87(2)(b) was under arrest when he made it clear that he did not want to provide his ID. This meant that PO Guillermo could not verify that § 87(2)(b) lived in the building, which meant that this was “criminal trespass.” PO Guillermo also stated that when people started surrounding them, § 87(2)(b) was committing disorderly conduct. PO Guillermo placed § 87(2)(b) in handcuffs because he could have been committing criminal trespassing, because he did not have ID and was not willing to give it to PO Guillermo, and for disorderly conduct. PO Guillermo then found ID in § 87(2)(b)’s pocket, so she arrested him for disorderly conduct and obstructing governmental administration but not criminal trespassing. § 87(2)(b) was charged with obstructing governmental administration because he did not allow PO Guillermo to do her job by refusing to show her his ID and claiming that he had none.

PO Guillermo viewed a copy of the supporting deposition for the case. She read the section that stated, “Deponent states that deponent observed defendant yelling and screaming for approximately 5 minutes. Deponent further states that defendant’s conduct created a public disturbance and that it caused a crowd to gather and that it caused people to express alarm.” When asked if this refreshed her memory about people “expressing alarm,” PO Guillermo stated that people were standing around the area with questioning expressions on their faces, and this was an indication of public alarm. PO Guillermo also said that some of the members of the public were saying things during her interaction with § 87(2)(b) but she could not hear what they were saying and did not pay attention to this because she was focusing on her interaction with § 87(2)(b) at that time.

PO Guillermo was asked to explain her understanding of her rights as an officer when interacting with people in NYCHA buildings. PO Guillermo said that if there is anyone in the lobby, anyone loitering in the building, or if anyone comes into the building without a key, PO Guillermo and other officers will usually approach that person and ask them if they have ID. If the person’s ID indicates that they live in the building and has their apartment number, PO Guillermo does a “stop question and frisk” and the person is “on their way.” If the person does not have ID or is visiting someone in the building, PO Guillermo will go with them to the apartment or take other investigative steps to verify that they live in the building. PO Guillermo stated that 9 out of 10 times that she interacts with people in the building, the residents cannot verify that they know the person or that they are an invited guest. PO Guillermo stated that in general, people who have something to do with drugs often wait in the lobby for someone to come down or they go upstairs in the building to buy drugs. When asked whether she had any suspicions about drugs specifically in relation to § 87(2)(b) (apart from the things already mentioned), PO Guillermo said she did not.

Subject Officer: POLICE OFFICER KRISTIN BEISSEL

- *PO Beissel is a § 87(2)(b) white female who is 5’4”, 126 pounds, with brown hair and blue eyes.*
- *February 5, 2009, PO Beissel worked a tour from 10:30 a.m. to 7:05 p.m. She was assigned to Post § 87(2) which covers all of the buildings in the § 87(2)(c). Her partner was PO Guillermo, and she was working in uniform on foot.*

Memo Book

PO Beissel made a number of memo book entries for this incident (encl. 9a-d). At 12:00 p.m. she indicated that she had arrived at her post, at 12:06 she wrote that she was doing a vertical patrol at 1694 Madison Avenue, and at 12:07 p.m. she wrote that they had one male stopped at

that location. At 12:10 p.m., she wrote “1 under by PO Guillermo,” meaning that PO Guillermo arrested one person. At 12:15 p.m. her memo book was signed by Sergeant Rodriguez.

CCRB Testimony

PO Beissel’s testimony (encl. 9e-g) was consistent with PO Guillermo’s with the following discrepancies and additional information. According to PO Beissel, when she and PO Guillermo entered the lobby, § 87(2)(b) was standing inside and looking around. PO Beissel stated that his behavior gave her and PO Guillermo reason to believe that he probably did not live in the building, because he was “just hanging out in the lobby.” According to PO Beissel, “If § 87(2)(b) was going to his mailbox, he would have gone to his mailbox. If he was expecting company, there would be someone coming in.” Unlike PO Guillermo, PO Beissel did not remember whether § 87(2)(b) appeared to notice the officers’ presence when they entered, although she said she assumed that he saw them. PO Beissel did not remember any additional factors that raised her suspicions about § 87(2)(b) at this time, and stated that it was PO Guillermo that initiated the stop. PO Beissel later said that because § 87(2)(b) appeared to be looking for someone or some thing, he had no authority to be in the building. NYCHA regulations require that if you are not an expected guest, you have no authority to be in the building. PO Beissel estimated that she and PO Guillermo observed § 87(2)(b) for approximately 3-4 minutes before PO Guillermo spoke to him, during which time the officers were standing in the lobby approximately 15-20 feet away from him, preparing to conduct the vertical patrol. PO Beissel and her partner then observed him to see what he was doing. PO Beissel did not remember if § 87(2)(b) made any movements with his hands or attempted to flee from the officers during the 3-4 minutes that she and PO Guillermo observed him. As far as she remembered, § 87(2)(b) was simply standing, and “hanging out,” in the lobby of the building.

PO Beissel later stated that because there are windows onto the lobby, she and PO Guillermo had observed § 87(2)(b) prior to entering the lobby. PO Beissel was suspicious of § 87(2)(b) prior to entering the building, and as they approached the building, PO Guillermo said to PO Beissel, “Let’s see what he’s doing in there.” The officers did not have any further discussion about what they planned to do or what they believed § 87(2)(b) was doing.

According to PO Beissel, when § 87(2)(b) was asked for his ID, he put his hands in his pockets and started looking for the ID. He then told PO Guillermo that he did not have any ID, and PO Guillermo then asked him to take his hands out of his pockets. PO Beissel did not remember § 87(2)(b) placing his hands back in his pockets after this, nor did she remember PO Guillermo asking him to do this again. PO Beissel did not remember there being any other civilians in the lobby except § 87(2)(b) and the mailman during the time the officers were speaking to § 87(2)(b) before he was handcuffed.

§ 87(2)(b) was placed in a van with the sergeant and his operator, who she believed was PO Feliciano. There were no other officers in the van.

Subject Officer: POLICE OFFICER ORVIN FELICIANO

- § 87(2)(b) *Hispanic male, 5’7”, 160 pounds, with black hair and brown eyes.*
- *On February 5, 2009, PO Feliciano worked a tour from 10:30 a.m. to 7:05 p.m., and was assigned to marked van # § 87(2)(b). His assignment was to be the operator for Sergeant Rodriguez.*

Memo Book

At 12:40 p.m., PO Feliciano wrote in his memo book “1 under by Officer Guillermo,” meaning that PO Guillermo had arrested one person (encl. 10a-c).

CCRB Testimony

PO Orvin Feliciano was interviewed at the CCRB on June 26, 2009. He did not recall this incident (encl. 10d-e).

NYPD Documents

Roll Call

The roll call for PSA5 for February 5, 2009 (encl. 11a-b) confirms that PO Guillermo and PO Beissel were assigned to foot posts and that PO Feliciano was the sergeant's operator.

Command Log

The PSA5 command log (encl. 12a) indicates that § 87(2)(b) was brought into the stationhouse at 12:25 p.m., his arresting officer was PO Guillermo, and he was being charged with disorderly conduct and obstructing governmental administration. He was transported to Central Booking at 8:19 p.m.

§ 87(2)(b), § 87(2)(a) 160.50

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of February 9, 2010 with regard to the incident (encl. 15d).

§ 87(2)(b)

Civilian's CCRB History

- § 87(2)(b) has filed the following CCRB complaints:
 - On September 2, 1988, § 87(2)(b) filed CCRB case # 8803107, alleging that an unidentified officer spoke discourteously to him. This case was closed as Complainant Uncooperative.
 - On April 21, 2009, § 87(2)(b) filed CCRB case # 20096048, in which he alleged that PO Erica Espaillat, PO Orvin Feliciano, and PO Jose Collazo stopped, questioned, and spoke discourteously towards him, also in the lobby of 1694 Madison Avenue. This case is being investigated by the undersigned and is still open.

Subject Officers' CCRB History

- PO Guillermo has been a member of the service for 3 years and there are no substantiated CCRB allegations against her (encl. 3a).
- PO Beissel has been a member of the service for 2 years and there are no substantiated CCRB allegations against her (encl. 3b).

- PO Feliciano has been a member of the service for 3 years and there are no substantiated CCRB allegations against him (encl. 3c).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

According to *DeBour*, officers must have “founded suspicion that criminal activity is afoot,” (encl. 1b) before they can question an individual in the manner outlined above. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

. According to *People v. Holland*, “Even in city-owned buildings, a person’s mere presence is insufficient,” to provide officers with an “objective, credible reason” to question them (encl. 2c). § 87(2)(b), § 87(2)(g)

Allegation C – Abuse of Authority: PO Orvin Feliciano threatened § 87(2)(b) with the use of force.

§ 87(2)(b) alleged that while he was in the police van, PO Feliciano said, "Don't make me go back there--I'll fuck you up." PO Feliciano did not remember interacting with § 87(2)(b) on this date. § 87(2)(b), § 87(2)(g)

Team: _____

:

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date